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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK AARON HAYNIE, BRENDAN  
RICAHRDS, THE CALGUNS  
FOUNDATION, INC., and THE  
SECOND AMENDMENT  
FOUNDATION, INC.,

Plaintiffs,

vs.

KAMALA HARRIS, Attorney General  
of California (in her official capacity),  
CALIFORNIA DEPARTMENT OF  
JUSTICE, CITY OF ROHNERT  
PARK, OFFICER DEAN BECKER  
(RP134) and DOES 1 TO 20,

Defendants.

Case No.: 3:10-CV-01255 SI

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Conference Date: September 6, 2013  
Conference Time: 3:00 p.m.  
Conference Place: Courtroom 10  
450 Golden Gate Ave  
San Francisco, CA  
94102

- Jurisdiction & Service** – The parties stipulate that the Court has subject matter jurisdiction over the plaintiffs's claims and there are no issues regarding personal jurisdiction or venue.

2. **Facts** – Mark Haynie was arrested once and Brendan Richards was arrested twice for violations of California Penal Code § 12280(b)<sup>1</sup> [30605] – possession of an unregistered assault weapon. In Brendan Richards’ case and with regard to both arrests, police were in the process of investigating a disturbance when they discovered several firearms in the trunk of Richards’ car. Based upon the officers’ belief that these firearms violated the California Assault Weapons Control Act (“AWCA”), Richards was arrested on the spot. Forensic experts employed by the California Department of Justice, however, reviewed the weapons and issued opinions that the firearms did not violate the AWCA. Subsequently, the Sonoma County District Attorney’s Office dismissed the criminal charges. Defendants City of Rohnert Park and Officer Dean Becker contend that the arresting officers had probable cause to make the arrest for violation of the AWCA.

3. **Legal Issues** –

- a. Is the California Assault Weapon Statutory (and Regulatory) Scheme unconstitutionally vague and ambiguous?
- b. Was the constitutionality of the AWCA clearly established law at the time of Brendan Richards’ arrests?
- c. Do plaintiffs have standing to sue the City of Rohnert Park for injunctive relief relating to the enforcement of the AWCA? See, *City of Los Angeles v. Lyons*, 461 U.S. 95.
- d. Given the totality of the circumstances known to the arresting officers, would a reasonably prudent person have concluded that a person in possession of a firearm similar in most respects to an illegal assault weapon, yet equipped with a small bullet button, was in violation of the AWCA? (For probable cause standard, see *Grant v. City of Long*

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<sup>1</sup> California has renumbered its Deadly Weapon Statutes effective January 1, 2012. The old numbers are cited and the new numbers are bracketed.

1 *Beach*, 315 F.3d 1081, 1085.)

2 e. Was the legality of an assault rifle equipped with a bullet button  
3 clearly established law at the time of the arrest?

4 f. Finally, is California Penal Code § 12031(e) [25850(b)]  
5 unconstitutional on its face? Does this statute provide police officers  
6 with probable cause to search a vehicle without a warrant? Was the  
7 constitutionality of this provision clearly established at the time of the  
8 search?

9 4. **Motions** – Defendants California Department of Justice and Kammala  
10 Harris filed a Motion to Dismiss which this court granted with leave to  
11 amend on October 22, 2011. Defendants City of Rohnert Park and Officer  
12 Dean Becker filed a Motion to Dismiss on December 23, 2011. The Court  
13 granted in part and denied in part, with leave to amend in an order filed on  
14 July 30, 2012. Plaintiffs and Defendants anticipate filing Motions for  
15 Summary Judgment.

16 5. **Amendment of Pleadings** – Pursuant to an Order of the Court, the  
17 Plaintiffs have filed an Amended and Consolidate Complaint on September 4,  
18 2012 (Doc #65). This is the current operative Complaint. However Plaintiffs  
19 Ploghorowitz and Defendants City of Cotati and Officer Andrew Lyssand  
20 have been dismissed from this action.

21 6. **Evidence Preservation** – Not applicable in this case.

22 7. **Disclosures** – Plaintiffs served their FRCP 26 Disclosures on all defendants  
23 on February 17, 2012 via email. The remaining parties agree to make their  
24 FRCP 26 disclosures pursuant to this Court's orders.

25 8. **Discovery**

26 a. Plaintiffs will take the following discovery.

27 i. Document Request.

28 ii. Interrogatories.

- 1           iii.     Requests for Admission.
- 2           iv.     Depositions.
- 3       b.     Defendants will take the following discovery.
- 4           i.     Document Request.
- 5           ii.    Interrogatories.
- 6           iii.   Requests for Admission.
- 7           iv.    Depositions.
- 8 9.     **Class Action** – Not applicable to this case.
- 9 10.    **Related Case** – None. A previously related case: *Plog-Horowitz v. Harris*,
- 10 Case No.: CV-12-0452 SI was filed and dismissed with prejudice.
- 11 11.    **Relief** – Plaintiffs seek damages, declaratory and prospective injunctive
- 12 relief and payment of attorney fees and costs.
- 13 12.    **Settlement & ADR** – The California defendants and plaintiffs have
- 14 participated in a Joint Neutral Evaluation. The Rohnert Park defendants
- 15 are willing to participate in settlement negotiations, however, they do not
- 16 believe that civil damages are available in this case. Plaintiffs are willing to
- 17 participate in ADR with all parties.
- 18 13.    **Consent to Magistrate Judge for All Purposes** – The parties have not
- 19 consented to a magistrate judge.
- 20 14.    **Other References** – Not applicable in this case.
- 21 15.    **Narrowing the Issues** – Plaintiffs would like to discuss procedures for a
- 22 bench trial in this matter in conjunction with (or in lieu of) a cross motions
- 23 for summary judgment.
- 24 16.    **Expedited Schedule** – Not applicable in this case.
- 25 17.    **Scheduling** – The parties anticipate the California Legislature enacting
- 26 several bills that may completely redefine assault weapons under California
- 27 law. The bills pending have not yet been passed into law or signed by the
- 28 Governor.

18. **Trial** – As noted above, plaintiffs are prepared to discuss a bench trial in conjunction with, or in lieu of, a Rule 56 Motion. Should plaintiffs' civil damages claim proceed beyond motion practice, the City of Rohnert Park and Officer Dean Becker request a jury trial on those issues. Defendants expect a five-day trial at this time.

19. **Disclosure of Non-Party Interest Entities or Persons** – None known at this time.

RESPECTFULLY SUBMITTED.

Date: August 30, 2013

Date: August 30, 2013

/s/

/s/

Ross Moody, Counsel for Defendant

Donald Kilmer, Counsel for Plaintiffs

Date: August 30, 2013

/s/

Robert W. Henkels  
County for Defendants  
City of Rohnert Park & Becker

**ATTESTATION FOR COMPLIANCE WITH GENERAL ORDER 45 AND  
LOCAL RULE VIII.B.**

I, Donald Kilmer, declare under penalty of perjury under the laws of California and the United States that I have in my possession e-mail correspondence from Ross Moody and Robert Henkels that the content of this document is acceptable to all persons required to sign the document. I declare that this document was signed in San Jose, CA on August 30, 2013.

/s/

Donald Kilmer of  
Attorney for for Plaintiffs